

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

| | | |
|--|---|----------------------------|
| FREEDOM FROM RELIGION FOUNDATION, INC., et al. |) | |
| |) | |
| |) | |
| Plaintiffs |) | |
| |) | |
| v. |) | Civil Action No. 17-cv-330 |
| |) | |
| DONALD J. TRUMP, President, et al. |) | |
| |) | |
| Defendants |) | |

UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO AMENDED COMPLAINT

Defendants President Donald J. Trump and John Koskinen, Commissioner, Internal Revenue Service, based on Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure, seek an extension of time to November 2, 2017, (29 additional days) to respond to the amended complaint filed by plaintiffs Freedom from Religion Foundation, Inc.; Dan Barker; and Annie Laurie Gaylor, Am. Compl. for Declaratory and Injunctive Relief, ECF No. 26. The Government needs additional time to respond to the amended complaint because the amended complaint raises new issues not raised by the original complaint and because of other professional obligations of the Government's counsel.

Plaintiffs filed this action on May 4, 2017, challenging the President's Executive Order on religious liberty, Exec. Order No. 13,798, Promoting Free Speech and Religious Liberty, 82 Fed. Reg. 21,675 (May 4, 2017), based on the Free Speech Clause and the Establishment Clause of the First Amendment, as well as other constitutional provisions, and seeking declaratory and injunctive relief. The Government filed a motion to dismiss on August 22, 2017. On September 19, 2017, the plaintiffs filed an amended complaint. On September 20, 2017, the Court entered a

minute order denying the Government's motion to dismiss as moot and advising that the Government may file a renewed motion to dismiss directed at the amended complaint.¹

The amended complaint was not properly filed on September 19, 2017, because, at that time, the plaintiffs were no longer permitted to amend their complaint as a matter of course. *See* Fed. R. Civ. P. 15(a)(1) (specifying that amendment as a matter of course is permitted only within 21 days after service of a Rule 12(b) motion to dismiss). Instead, amendment of the complaint required the Government's written consent or the Court's leave. *See* Fed. R. Civ. P. 15(a)(2). Assuming the Court's September 20, 2017, minute order had the effect of granting leave to file the amended complaint, the Government's time to respond to the amended complaint runs from the date of that order. Thus, the Government's response to the amended complaint is currently due October 4, 2017. *See* Fed. R. Civ. P. 15(a)(3).

The Government seeks an extension of time to November 2, 2017, to respond to the amended complaint because the amended complaint raises new issues not raised by the original complaint and because of other professional obligations of the Government's counsel, including multiple court deadlines during the month of October.

The Government conferred with the plaintiffs to determine their position on the Government's request for an extension. The plaintiffs indicated they do not oppose the Government's request.

Date: September 21, 2017

Respectfully submitted,

CHAD A. READLER

¹ The Court's September 20, 2017, minute order also denied as moot a motion to dismiss filed by proposed intervenors Charles Moodie, Koua Vang, Patrick Malone, and Holy Cross Anglican Church, Proposed Def.-Intervenors' Mot. to Dismiss, ECF No. 19. As the Government stated in an earlier filing, the Government's understanding is that the Court has not yet acted on the proposed intervenors' motion to intervene, and therefore the proposed intervenors are not currently parties in the case. *See* Unopposed Mot. to Stay Pretrial Conference 2 n.1, ECF No. 22.

Acting Assistant Attorney General

JEFFREY M. ANDERSON
Acting United States Attorney

LESLEY FARBY
Assistant Branch Director

s/ JAMES C. LUH

JAMES C. LUH
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave NW
Washington DC 20530
Tel: (202) 514-4938
Fax: (202) 616-8460
E-mail: James.Luh@usdoj.gov
Attorneys for Defendants